

The 18th July, 1985

No. 9/5/84-6 Lab./6072.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Eicher Precision Machines Ltd., Plot No. 75, Sector 6, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 133 of 1982.

Between

SHRI MAHESH KUMAR VERMA, WORKMAN AND THE MANAGEMENT OF M/S. EICHER PRECISION MACHINES LTD., PLOT NO. 75, SECTOR 6, FARIDABAD

Present :—

Shri C. L. Oberai, for the workman.
Shri Jagat Arora, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Mahesh Kumar Verma, Workman and the Management of M/s. Eicher Precision Machines Ltd., Plot No. 75, Sector 6, Faridabad, to this Tribunal for adjudication :—

Whether the termination of service of Shri Mahesh Kumar Verma, was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The claimant in his claim statement dated 8th June, 1982 alleged that he was a permanent employee in the respondent factory working as Machinist with effect from 15th May, 1978 at the monthly salary of Rs. 573. It was further alleged that the claimant was dismissed illegally and no opportunity was given to him to defend himself during the enquiry proceedings and further that the Enquiry Officer was a paid employee of the respondent company. It was also alleged that the charges framed against the claimant were not so major and the punishment given to the claimant was severe. It was then alleged that the charge-sheet was not signed by the competent

person. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The Management in their reply dated 9th July, 1982, pleaded that two charge-sheets dated 15th May, 1981 and 6th June, 1981 were served on the claimant and that the domestic enquiry was held in which he was given full opportunity to defend his case and to cross examine the witnesses. It was also pleaded that the Enquiry Officer was an impartial person and that the claimant was allowed to bring his representative to assist him in the enquiry and that punishment given to the claimant was not severe. It was also pleaded that the charge-sheet was issued by the General Manager of the Company who was competent to sign the same and that the letter of dismissal was issued by the Executive Director who had appointed the claimant and was holding power of attorney which empowered the Director to appoint or to dismiss any employee.

4. On the pleadings of the parties, the following issues were framed on 2nd August, 1982 :—

- (1) Whether the domestic enquiry is proper and fair ? OPM.
- (2) Whether the termination of service of Shri Mahesh Kumar was justified and order ? If not, to what relief is he entitled ?

5. It may be mentioned that the Management has examined three witnesses and documents Ex. M-1 to M-64 and MW-3/1 to MW-3/2 have been tendered into evidence. The claimant has examined three witnesses and documents Ex. W-1 to W-15 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

Issue No. 1 :

6. The Management has examined MW-1 Shri S. K. Taneja who stated that he was appointed as Enquiry Officer,—vide letter Ex. M-1 and that Ex. M-2 and M-3 were copies of the charge-sheets. He further stated that notice Ex. M-4 was sent by the management and that Ex. M-5 contained day to day proceedings of the enquiry. He further stated the claimant participated in the enquiry on same dates and thereafter he did not appear. He also stated that the representative of the claimant also appeared on some dates and that deducements Ex. M-6 to M-44 were filed during the enquiry proceedings and that document Ex. M-45 contained the list of documents. He then

stated that document Ex. M-46 contained the findings of his enquiry, which was sent by him to the Management,—vide letter Ex. M-47. MW-2 Shri L. K. Marvaha stated that he was a Factory Manager and notified his name to the Factory Inspector,—vide documents Ex. M-48 and 49. He then stated on receipt of the report of the enquiry, second show cause Ex. M-50 was sent to be the claimant under postal certificate,—vide receipt Ex. M-51 and also by registered post,—vide postal receipt Ex. M-52, but the registered envelope was received back. He then stated that Ex. M-53 contained the dismissal letter, which was sent by post,—vide receipt Ex. M-54 and under postal certificate Ex. M-55. He further stated that registered letter was received back,—vide envelope Ex. M-56 and further that intimation regarding the amount due to the claimant was sent,—vide letter Ex. M-57 and that Ex. M-58 was the postal receipt. He then stated that the amount was sent by money order,—vide postal receipt Ex. M-59, but the same was received back,—vide coupon Ex. M-60. He also stated that the registered letter was received back which was Ex. M-61 with the report of the postal authority that the claimant had refused to receive the same. He then stated that Ex. M-62 was the power of attorney in favour of Mr. Malhotra, Executive Director. Ex. M-63 is the leave application form dated 23rd April, 1981 from 11.30 A.M. to 12.30 A.N. while Ex. M-64 is the leave application dated 27th May, 1981. Ex. MW-3/1 is the letter written by the Management to the claimant informing that he was absent from duty since 25th August, 1981, without intimation while Ex. MW-3/2 is the postal receipt to the effect that the letter Ex. MW-3/1 was sent under certificate of posting.

6. The claimant has appeared as WW-1 and stated that he had received the charge-sheet and given the explanation. He further stated that he was not permitted to bring his representative during the domestic enquiry when he filed an application copy Ex. W-1 in that respect and that he wrote a letter to the management copy Ex. W-2. He further stated that he also wrote the letters, copies Ex. W-3 to W-6 but did not receive any reply and no opportunity was given to him to produce the defence evidence nor he was allowed to cross examine the witnesses produced by the management. He further stated that he lodged a complaint with the police copy Ex. W-7 against the Enquiry Officer who had compelled the claimant to sign the resignation letter and to settle the accounts. He also stated that he was on leave on 23rd April, 1981, which, was duly sectioned,—vide letter Ex. W-8 and that he was on

medical leave from 28th April, 1981 to 30th April, 1981,—vide document Ex. W-9. He then stated that he was on leave on 27th May, 1981,—vide document Ex. W-10. He then stated that he did not give the name of Shri Shive Kumar to represent the claimant in the enquiry but he participated in the enquiry at the instance of the management. He further stated that he did not receive the copy of the telegram Ex. W-11 from the Management nor he received the telegram Copy Ex. W-12. He also stated that he did not receive the letter dated 10th May, 1981 from the management Ex. W-13 as well as the telegram dated 10th August, 1981 Ex. W-14. He further stated that he did not refuse to participate in the enquiry on 14th August, 1981, and that document Ex. W-15 was not correct. He further stated that he was not called to attend the enquiry on 14th August, 1981 and also on 5th September, 1981, 1st August, 1981 and 10th August, 1981. WW-2 Shri Shiv Kumar Sharma stated that he was working in Eicher Research Centre, which was a sister concern of Eicher Precision. He further stated that he knew the claimant Shri Mahesh Kumar Verma because both of them worked in the same concern. He then stated that the Enquiry Officer told him that an outsider could not appear to represent the claimant in the enquiry and as such he (WW-2) should become representative of the claimant. He further stated no opportunity was given to the claimant to bring his witnesses in defence. He then stated that the enquiry was held in his absence but he signed the enquiry proceedings at the instance of the Enquiry Officer and realised that this procedure was not correct when he told the Enquiry Officer that he would not participate in the enquiry proceedings in future. WW-3 Shri Amar Chand Sharma stated that he participated in the enquiry held against the claimant in 1981 on two or three occasions and that the Enquiry Officer had asked him to represent the claimant. He further stated that the claimant did not ask him for this purpose and thereafter he did not participate in the enquiry. He then stated that the Enquiry Officer told him that he had to merely sit at the time of the enquiry and that no other job had to be performed by him.

7. A perusal of the above evidence would show that the following charges were framed against the claimant as mentioned in the charge-sheets, Ex. M-2 and M-3. (Ex. M-1) charge-sheet dated 18th May, 1981 :—

Charge No.—

- (1) Willful disobedience to the lawful and reasonable orders of superiors.

- (2) Absence from the place of work without prior permission.
- (3) Levelling false allegations against his superiors.
- (4) Operating the machine in disorderly manner resulting in damage to the machine.
- (5) Operating the machine in disorderly manner with a view to cause damage to the machine.
- (6) Causing obstruction to a co-worker by suddenly putting his machine in reverse gear resulting breakage of tool and spoiling of a work piece which could have caused fatal accident and major loss of company's property.
- (7) Habitual absence from duty.

Chargesheet dated 6-6-1981 (Ex. M-2).

Charge No. :

- (1) Habitual absence from duty.
- (2) Engaging himself in private business in violation of terms and conditions of his appointment letter.

Ex. M-5 contains the day to day proceedings of the enquiry, which show that the claimant was proceeded ex parte on 14th August, 1981. The Management examined Shri M. L. Sharma, Shri R. D. Chugh, Shri S. K. Vashist, Shri R. C. Bhatt & Shri Lalit Mohan. The Enquiry Officer referred to the evidence given by these witnesses in his report Ex. M-46 and documentary evidence led before the Enquiry Officer also finds mention in his report Ex. M-46. After considering the entire evidence, the Enquiry Officer found that all the above mentioned charges stood proved against the claimant. The report of the Enquiry Officer is thus based on the evidence led before him by the Management.

8. It was argued on behalf of the workman that ex parte order passed by the Enquiry Officer against the claimant was wrong. The argument on the other side was, that the Enquiry Officer proceeded ex parte against the claimant in a legal manner. A perusal of the enquiry proceedings Ex. M-5 show that the claimant also absent-ed himself on 2nd July, 1981, 4th July, 1981 and 1st August, 1981. The report of Shri R. D. Chugh Assistant Engineer, dated 1st August, 1981, was to the effect that the claimant was called by him, but he had refused to participate in the enquiry

proceedings and the proceedings also show that Shri M. Joseph, Senior Assistant Personnel was deputed by the Enquiry Officer to inform the claimant regarding the enquiry, but claimant refused to receive the letter and also refused to participate in the enquiry and further that Shri Amar Chand Sharma, also informed the claimant but the advice given by him had no effect on the claimant. The case was adjourned to 10th August, 1981. On 3rd August, 1981, the registered letter Ex. M-16 was sent to claimant for appearing in the enquiry on 10th August, 1981, but the claimant did not appear and the enquiry was adjourned to 14th August, 1981. Information was sent to the claimant by registered post copy Ex. M-17. The telegram was also sent to him, copy Ex. M-18. On 13th August, 1981, the claimant attended his duty and the copy of the telegram Ex. M-18 was handed over to the claimant, but he refused to receive this document as per report made by Shri Amar Chand and Shri Joseph on the document Ex. M-19. On 14th August, 1981, the claimant was called through his shop Incharge to participate in the enquiry who informed the claimant, but the claimant refused to participate in the enquiry as per report Ex. M-20. Ex. M-21 is the copy of the postal receipt, which shows that the claimant had refused to receive the registered letter Ex. M-18. Under these circumstances, the Enquiry Officer decided to hold ex parte proceedings against the claimant and recorded the evidence of the Management. It is thus apparent that absence of the claimant on 2nd July, 1981, 4th July, 1981, 1st August, 1981, 10th August, 1981 and 14th August, 1981 was without any basis and he refused to participate in the enquiry in spite of several notices sent to him,—vide documents Ex. M-16 to B-21. It may also be mentioned that the Enquiry Officer again wrote a registered letter, copy Ex. M-40, asking him to appear on 5th September, 1981 to participate in the enquiry. The telegram Ex. M-41 was also sent to him and publication was also done in the News Papers copy Ex. M-42. The report of the postal authority, Ex. M-43, shows that the telegram, copy Ex. M-41, was delivered to the claimant on 31st August, 1981. The registered envelope Ex. M-44 sent to him was received back with report of refusal. It will thus be seen that the Enquiry Officer again gave another opportunity to the claimant to appear on 5th September, 1981, notwithstanding the fact that the ex parte proceedings were ordered against the claimant on 14th August, 1981 but the claimant did not participate in the enquiry inspite of the notices because the telegram was received by him as per report Ex. M-43. The plea

taken by Shri Mahesh Kumar Verma claimant as WW-1 that he did not receive the telegram and never refused to participate in the Enquiry does not carry any weight because the Management has led documentary evidence, as mentioned above, to prove that the claimant did not participate in the enquiry inspite of several notices sent to him. Under these circumstances, the order of the Enquiry Officer proceeding against the claimant ex-parte, cannot be interfered with.

9. It was then argued that the claimant was not permitted to bring Shri C. L. Oberai, as his representation to help in the enquiry. A perusal of the enquiry proceedings Ex. M-5 would show that the Management had raised an objection that Shri C. L. Oberai was an outsider and that there was no Trade Union in the factory. The claimant suggested the name of Shri Amar Chand Sharma as his representative. The said name was approved by the Enquiry Officer. Shri Amar Chand participated in the Enquiry on 4th July, 1981 and 7th July, 1981. On 11th July, 1981, Shri Amar Chand was not present and the claimant wanted time to bring another representative. On 15th July, 1981, he suggested the name of Shri Shiv Kumar Sharma which was approved by the Enquiry Officer. Shri Shiv Kumar Sharma attended the Enquiry on 20th July, 1981 and 27th July, 1981 and thereafter he absented himself. It is thus apparent that the claimant was represented by Shri Amar Chand Sharma in the first instance and later on by Shri Shiv Kumar Sharma, but the representatives did not attend the enquiry later on. The claimant also did not participate in the enquiry with effect from 1st August, 1981. Under these circumstances, there is no force in the argument raised by the claimant that he was not permitted to bring his representative to assist him in the enquiry.

10. It was then argued that the claimant did not suggest the name of Shri Amar Chand Sharma and Shri Shiv Kumar Sharma, but, on the other hand, they were appointed by the Enquiry Officer himself. Shri Mahesh Kumar Verma Claimant, (WW-1) Shri Shiv Kumar Sharma (WW-2) and Shri Amar Chand (WW-3) deposed that the Enquiry Officer had appointed these representatives. No such question was put to Shri S. K. Taneja, Enquiry Officer (MW-1) in cross-examination or MW-2 Shri L. K. Marvaha, Factory Manager. Enquiry proceedings Ex. M-5 show that the names of Shri Amar Chand Sharma and Shri Shiv Kumar Sharma were suggested by the claimant. Consequently, the plea taken by the

claimant that these representatives were appointed by the Enquiry Officer himself, is nothing, but an after thought.

11. It was further argued that the Enquiry Officer was not an independent person and that the claimant had made a complaint against him to the police,—vide copy of the claimant Ex. M-7. This document shows that a complaint was made on 8th September, 1981. Firstly, the enquiry proceedings came to an end on 5th September, 1981. Secondly, no question was put to the Enquiry Officer regarding this report when he appeared in the witness box as MW-1. Thirdly, if the allegations made in the complaint were correct, then the police must have registered the case against the Enquiry Officer. Consequently, the plea taken by the claimant does not carry any weight and it does not stand proved that the Enquiry Officer was biased against the claimant. On the other hand, the enquiry proceedings show that the Enquiry Officer gave a number of opportunities to the claimant to participate in the enquiry, but his effort ended in smoke. It may be mentioned that it was argued on behalf of the claimant that the claimant was on leave from 11.30 a.m. to 4.00 p.m., on 23rd April, 1981, and as such the second charge against the claimant in the charge-sheet Ex. M-2 showing his absence for 40 minutes between 2.00 p.m. to 2.40 p.m. was wrong. Firstly, the document Ex. W-8 does not bear signature of any officer of the respondent Company. Moreover, no such question was put to the Enquiry Officer when he appeared in the witness box as MW-1. Further Mr. R. D. Chugh, Assistant Engineer of the claimant in the enquiry stated that claimant was absent between 2.00 p.m. to 2.40 p.m. on 23rd April, 1981. Consequently, the testimony of the claimant to the effect that he was on leave from 11.00 A.M. to 4.00 P.M., cannot be accepted.

12. In the ruling reported as **G. McKenzie & Co. Ltd., and Its Workmen and others**, 1951-I-LLJ-page 285, it is laid down that no order of dismissal shall be made unless the worker concerned is informed and given opportunity of explaining the circumstances alleged against him but to avail himself of this privilege, such worker must attend before them: As already mentioned above, the claimant absented himself on a number of occasions without any sufficient ground and he even refused to give any reply to the second show cause registered notice which was returned as refused Ex. M-52. In the ruling reported as **Union of India and Verma (T.R.)**, 1958-II-LJJ page 259, it is laid down that the law requires

that the domestic Tribunal should observe rules of natural justice in the conduct of the enquiry. In the present case, the Enquiry Officer adopted this procedure, but the claimant did not avail of the opportunity given to him, as mentioned above.

13. In view of the above discussion, it is held that the enquiry is fair and proper. The issue is decided accordingly in favour of the Management.

Issue No 2:

14. The representatives of both the parties were heard on the quantum of sentence. In the ruling reported as **The Bata Shoe Co. (P) Ltd., v. D. R. Ganguly and another**, AIR-1961 Supreme Court 1158, it is laid down that where an enquiry has been properly held and the employer has imposed the punishment of dismissal on the employee who has been guilty of the misconduct of joining the illegal strike, the Tribunal should not interfere unless it finds unfair labour practice or victimisation of the employee. In the ruling reported as **Sarabhai M. Chemicals (S. M. Chemicals and Electronics) Limited and M. S. Ajmere and another**, 1980 I L.L.J. page 295, it is laid down that it cannot be said that disciplinary proceedings for misconduct can never be taken against an employee on a charge of insubordination arising out of a solitary instance of lawful order and that for sustaining such charge of insubordination several repeated instances of disobedience are necessary. The argument of the representative of the claimant was that the punishment awarded to the claimant was disproportionate to the charges levelled against him whereas the contention of the representative of the management was that the punishment of dismissal was in commensurate with the charges proved against him. As already mentioned above there were two charge-sheets against the claimant consisting of 10 charges which were of a serious nature and keeping in view the cumulative effect of these 10 charges, the punishment of dismissal is not disproportionate to the charges proved against the claimant. Under these circumstances, no interference is called for in the matter of punishment under Section 11-A of the Industrial Disputes Act, 1947. As such, the claimant is not entitled to any relief. The award is passed accordingly.

Dated, the 11th July, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana.
Faridabad,

Endorsement No. 541, dated 11th July, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

Dated, the 11th July, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab./6085.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s. Premier Straw Board Paper Mills, Pvt. Ltd., Plot No. 87-88, Sector 25, Faridabad :—

BEFORE SHRI R. N. BATRA, PRESIDING
OFFICER INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 288/1983.

Between

SHRI SUKHAN LAL WORKMAN AND THE
MANAGEMENT OF M/S. PREMIER STRAW
BOARD PAPER MILLS (P.) LTD., PLOT
NO. 87-88, SECTOR 25, FARIDABAD.

Present :—

Shri H. S. Yadav for the workman.

Shri R. C. Sharma for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Sukhan Lal, and the Management of M/s. Premier Straw Board Paper Mills (P.), Ltd., Plot No. 87-88, Sector 25, Faridabad, to this Tribunal for adjudication :—

Whether the termination of services of Shri Sukhan Lal was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The claimant in his demand notice dated 10th March, 1983, stated that he was employed as Carpenter in the respondent factory, but his services were terminated on 30th January, 1983 on the alleged ground of retrenchment, which order was illegal and as such the claimant was entitled to reinstatement with full back wages.

3. The respondent Management in its written statement dated 27th July, 1984, pleaded that the claimant joined service on 6th January, 1979 as Carpenter. It was then pleaded that previously there were three shifts in the factory which were reduced to two shifts in the first instance and finally one shift was being run in the factory since January, 1983 and as such, many workers became surplus. It was further pleaded that the Management issued retrenchment notices to the affected workers including the claimant, on 31st January, 1983, but the claimant refused to receive the payment which was ultimately sent by bank draft amounting to Rs. 2612-10 paise by registered post, but the claimant did not receive the amount and that postman reported that the claimant was not available. It was then pleaded that the termination was effected by way of retrenchment.

4. The claimant in his rejoinder dated 16th August, 1984 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issue was framed on 16th August, 1984:—

(1) Whether the termination of service of Shri Sukhan Lal was justified and in order? If not, to what relief is he entitled?

OPM

6. It may be mentioned that the Management examined one witness and document, Ex. M-1 to M-10, have been tendered into evidence. The claimant appeared in the witness box. After going through the entire evidence and hearing the representatives of both the parties, my finding on the above line is as under:—

Issue No. 1:

7. The Management has examined MW-1 Shri Om Parkash Sharma Manager, who stated that 21 workers, including the claimant, were retrenched. He further stated that previously there were three shifts, but only one shift was being run when the retrenchment was effected and that Excise Department was informed,—vide documents Ex. M-1 and M-2. He further stated that seniority list Ex. M-3 was displayed on the notice board and that notice was also given to the claimant copy Ex. M-4, which was received

by him. He also stated that Ex. M-5 was the calculation chart regarding the amount due to him and that dues were offered to the claimant,—vide voucher Ex. M-6, but he refused to receive the same on 28th February, 1983. He also stated that the amount was sent by bank draft copy Ex. M-8,—vide letter Ex. M-7, but the registered letter was received back as undelivered Ex. M-9. He further stated that Ex. M-10 was the copy of the Form 'P' sent to the Government. He also stated that no person had been employed as Carpenter in place of the claimant and that there was no change in the total number of workers in the factory after the retrenchment.

7. WW-1 Shri Sukhan Lal claimant stated that he was employed on 6th January 1979 as Carpenter and drawing Rs. 599 when he received a letter from the respondent-management regarding retrenchment. He further stated that he did not receive any compensation. He further stated that no Carpenter was employed in the factory, but Carpenter was employed on contract basis.

8. A perusal of the above evidence would show that the claimant was employed on 6th January, 1979 as Carpenter but notice Ex. M-4 was given to him on 30th January, 1983 and his service were terminated on 28th February, 1983, alongwith 20 workers. The name of the claimant appears in the seniority list Ex. M-3. Evidence further shows that the sum of Rs. 2,612.10 paise was offered to the claimant as compensation, etc., but the claimant refused to receive the same and the amount was sent to him by draft by registered post on 5th March, 1983, which was received back as undelivered on the ground that the claimant was not available. The case of the management is that previously there were three shifts and that only one shift was being run since January 1983, due to which the retrenchment of 21 workers including the claimant was effected. The claimant was given one month notice on 30th January, 1983 and on the expiry of the said notice, he refused to receive the amount of compensation,—vide voucher Ex. M-6. The management also sent the amount by means of draft,—vide registered letter, but the claimant was not available and as such the letter was received back as undelivered. The Management has, therefore, complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 but the claimant refused to receive the amount. The plea of the claimant that no compensation was given to him is without any basis because he refused to receive the amount, as mentioned above. His further

plea that Carpenters were working on contract basis is without any force because no documentary evidence has been produced to show that the respondent was taking the job of carpenter by employing contract labour, especially when no person was employed in place of the claimant. Consequently, the termination of services of the claimant was justified and in order and as such, the claimant is not entitled to any relief. The award is passed accordingly.

Dated the 12th July, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana.
Faridabad.

Endorsement No. 545, dated 13th July, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

Dated, the 12th July, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana.
Faridabad.

The 23rd July, 1985.

No. 9/5/84-6Lab./6200.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s Premier Straw Boards Private Ltd. Plot No. 87-88, Sector 25, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA FARIDABAD

Reference No. 94/1983.
between

SHRI LAKHMI SINGH AND THE MANAGEMENT OF M/S PREMIER STRAW BOARDS PVT. LTD PLOT NO. 87-88, SECTOR-25, FARIDABAD.

Present:—

Shri Manohar Lal, for the workman.
Shri R. C. Sharma, for the management,

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Lakhmi Singh Wokman and the Management of M/s Premier Straw Boards Pvt. Ltd., Plot No. 87-88, Sector-25, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Lakhmi Singh was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his claim statement dated 3rd March, 1983 alleged that he was employed in the respondent factory as Electrician about five years ago and that his last drawn pay was Rs. 485 per month. It was then alleged that being General Secretary of Premier Straw Board Union, he espoused the cause of his co-workers and demanded the unpaid arrears of D.A. for the workers. It was then alleged that the claimant was not permitted to join duty on 10th July, 1982 and was stopped at the gate of the factory when the matter was brought to the notice of the Labour Inspector. It was also alleged that the management initiated the enquiry against the claimant and terminated the services of the claimant and that the order of termination was against the principles of natural justice and that the enquiry was perverse. It was further prayed that the claimant be reinstated with full back wages.

3. The Management in their written statement filed on 11th April, 1983 pleaded that the claimant was employed as Electrician, but he mis-behaved with Shri Mishri Lal Time Keeper and Shri Pal Ram Cashier when a charge-sheet was sent to the claimant by registered post but he refused to receive the same and thereafter an enquiry was started. It was then pleaded that Shri Satish Kumar Ahuja was appointed as Enquiry Officer, when the claimant participated in the enquiry and was assisted by Shri R. D. Yadav in that enquiry. It was then pleaded that the enquiry officer found the claimant guilty and that on receipt of the report of the Enquiry Officer, second show cause notice dated 28th October, 1982 was served on the claimant who gave his reply and after considering all the circumstances and gravity of the charges, the claimant was dismissed with effect from 21st October, 1982 and that the order of dismissal was justified and proper.

4. The claimant in his rejoinder filed on 2nd July, 1984, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 2nd July, 1984:—

(1) Whether the enquiry was fair and proper as pleaded? OPM

(2) Whether the termination of service of Shri Lakhmi Singh was justified and in order ? If not, to what relief he is entitled? OPM

6. It may be mentioned that the management examined one witness and documents Exhibit M—1 to M—21 have been tendered into evidence. The claimant has appeared in the witness-box and document Exhibit W—1 has been tendered into evidence. After hearing both sides and going through the entire evidence, my findings on the above issues are as under:—

ISSUE NO. 1 :

7. The Management has examined MW—1 Shri Satish Ahuja, Advocate, Enquiry Officer, who stated that he was appointed as Enquiry Officer,—vide letter Exhibit M—1 and that Exhibit M—2 was the copy of the chargesheet. He further stated that he issued the summons to the claimant which were Exhibit M—3 and M—4, and that Exhibit M—5 contained the enquiry proceedings and that the documents Exhibit M—6 to M—16 were produced in that enquiry. He further stated that Exhibit M—16 was his Enquiry report and that all the charges stood proved against the claimant, who was given full opportunity to cross examine the witness of the management and was represented by an authorised representative. He also stated that the claimant was given full opportunity to produce his defence and was supplied the copies of day to day enquiry proceedings. The documents Exhibit M—17 to M—21 were tendered into evidence by the representative of the management.

8. WW—1 Shri Lakhmi Singh claimant stated that he was employed in the respondent factory as Electrician about five years ago and was getting Rs. 480 per month but was turned out on 10th July, 1982 by the Management. He further stated that he went to the Time Keeper to obtain the pay slip and did not misbehave with the Time Keeper also stated that he (WW1) would be taken back on duty if he resigned from the post of General Secretary of the Union. He also stated that he was the Office bearer of the

Union and information was sent to the Management. He further stated that he took part in the Enquiry Proceedings, but he had told the management that he had no faith on the Enquiry Officer who was a man of the management and that statements of witnesses were not read over by the Enquiry Officer. He further stated that the statements were not recorded by the Enquiry Officer properly inspite of objections raised by him.

9. A perusal of the above evidence would show that document Exhibit M—2 is the charge-sheet, dated 10th July, 1982 in which it was alleged that the claimant did not collect his wages on 7th July, 1982 and 8th July, 1982 and that he went to the Head Time Keeper on 9th July, 1982 at 8-15 a.m. and asked for the wages, when Shri Mishri Lal, Head Time keeper, told him that wages would be paid on the arrival of the Cashier at 9.00 a.m. but the claimant abused the Head Time Keeper and gave a threat to kill him. It was further alleged that at 9.00 a.m. Shri Bal Ram, Cashier, came to the factory when the claimant demanded the wages but the Cashier told him that the claimant did not collect the wages on 7th July, 1982 and 8th July, 1982, and that the wages would be paid to him on the arrival of the cash at 12.00 noon when the claimant gave a threat to the Cashier. Exhibit M—5 contains the enquiry proceedings. A perusal of this document shows that the Enquiry Officer examined 5 witnesses, namely Shri O. P. Sharma, Shri Mishri Lal, Shri Bal Ram Cashier, Shri Radha Raman and Shri R. D. Arya who were produced by the Management in support of its case. The claimant examined himself Duley Ram, Shri Anant Ram and Shri Matwar Singh Rana. The argument of the representative of the claimant was that no reasons were given by the Enquiry Officer while rejecting the testimony of the witnesses produced by the workman. In the enquiry report Exhibit M—16, the statements of all the witnesses produced by both the parties have been mentioned in detail. The Enquiry Officer found that the statement of witness produced by the Management were consistent while the statements of witnesses produced by the claimant were shaky and not believable. In other words, the Enquiry Officer found that the statements of the defence witnesses were inconsistent. WW—1 Shri Lakhmi Singh did not mention the name of WW—2 Shri Duley Ram and Shri Anant Ram WW—3 being present when the incident took place. WW—2 Shri Duley Ram stated that all three of them went together while WW—3 Shri Anant Ram stated that when

he went to the spot, Shri Lakshmi Singh WW-1 and WW-2 Shri Duley Ram were present WW-4 Shri Matwar Singh stated that he was on leave when the incident took place. Keeping in view the version given by these witnesses, the Enquiry Officer found that the statements of the witnesses produced by the workmen, were shaky.

10. It was then argued by the representative of the claimant that the enquiry officer was not an independent person. The argument is without any force because Shri Satish Ahuja, who was appointed as Enquiry Officer is an Advocate, and being a responsible person was appointed as Enquiry Officer. In view of the above discussion, no interference with the Enquiry report is called for because the enquiry held by the Enquiry Officer is fair and proper. Issue No. 1 is decided accordingly in favour of the Management.

Issue No. 2 :

11. It was argued by the representative of the workman that keeping in view of the charges levelled against the claimant, the punishment was disproportionate to the charges proved against the claimant, whereas the argument from the opposite side was that the punishment was commensurate with the offence committed by the claimant. In a nut shell, the claimant abused Shri Mishri Lal Head Time Keeper and gave a threat to him and also Shri Balram Cashier when he demanded his wages and he was asked to wait for some time. The order of dismissal Exhibit M-21 does not show that the past conduct of the claimant was not clean. Consequently, keeping in view the charges proved against the claimant and the circumstance that his past record was clean, the punishment of dismissal is disproportionate to the charges proved against him. The interest of justice would be met if the order of dismissal is set aside and the claimant is reinstated, but should be deprived of full backwages for his misconduct. The award is passed accordingly.

Dated 15th July, 1985

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 549, Dated 15th July, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section—15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84Lab./6201.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s Elmec Tools & Devices Pvt. Ltd. 17/B, Industrial Area, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL HARYANA, FARIDABAD.

Reference No. 591/1983.

between
SHRI DHARAM PAL SINGH VERMA WORKMAN AND THE MANAGEMENT OF M/S ELMEC TOOLS & DEVICES PVT. LTD., 17-B, INDUSTRIAL AREA, FARIDABAD.

Present:—

Shri R. P. Singh, for the workman.
Shri G. S. Chaudhary, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Dharam Pal Singh Verma Workman and the Management of M/s Elmec Tools & Devices Pvt. Ltd., 17-B, Industrial Area, Faridabad, to this Tribunal, for adjudication:—

Whether the termination of service of Shri Dharam Pal Singh Verma was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The claimant in his claim statement dated 17th September, 1984, alleged that he was working as Time Keeper with the respondent Management since 1st May, 1981 and was drawing

Rs. 528 per month. It was then alleged that he worked upto 9th May, 1983, but his services were terminated illegally by the Management. It was then alleged that a complaint was lodged with the Labour Inspector on 19th July, 1983, but to no effect. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The Management in the written statement filed on 7th November 1984, pleaded that the claimant started demanding illegal gratification in cash and kind from the employees and harassing them on one pretext or the other in matters of leave application, marking attendance etc. due to which the Management lost its confidence in the claimant and terminated his services on 9th May, 1983 as 'discharge simpli-citer'.

4. The claimant in his rejoinder dated 4th December 1984 reiterated pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 1-1-1985:—

- (1) Whether the management has lost its confidence in the claim ? OPM.
- (2) Whether the termination of service of Shri Dharam Pal Singh Verma was justified and in order ? If not, to what relief is he entitled ? OPM.

6. It may be mentioned that the Management examined three witnesses and the documents, Ex. M-1 to M-4, have been tendered into evidence. The claimant has appeared in the witness box and the document, Ex. W-1, has been tendered into evidence. After going through the entire evidence and hearing the representative of both the parties, my findings on the above issues are as under:—

ISSUE NO. 1 :

7. MW-1 Shri Vinod Kumar Aggarwal, Manager of the respondent factory, stated that the claimant was employed as Time Keeper in 1981 who used to mark attendance and maintained the record of leave, wages etc. of the workers. He further stated that the Management received a number of complaints against the claimant from the workers and that Ex. M-1 to M-3 were the complaints. He further stated that the claimant was orally warned, but in vain, and was thus dismissed from service because he had lost confidence. The document Ex. M-4 is the copy of the comments given in conciliation proceedings. MW-2 Shri Mahabir Prasad stated that he did not make any complaint against the claimant and that he wrote in the complaint Ex. M-2 what was told to him by the Manage-

ment. MW-3 Shri Om Parkash stated that complaint Ex. M-1 was not filed by him.

8. WW-1 Shri Dharam Pal Singh Verma claimant stated that he was employed on 1st May, 1981 and worked upto 8th May, 1983, but he was turned out on 9th May, 1983, when he was not permitted to join duty and that the complaint Ex. W-1 was filed by him to the Labour Inspector. He further stated that he was advised by the Labour Inspector to serve the demand notice on the Management. He also stated that he was told by Shri Mahavir Prasad that the respondent Management had obtained the signatures of 5/6 persons on some documents against the claimant. He further stated that he was unemployed since then.

9. A perusal of the above evidence would show that the testimony of MW-1 Shri Vinod Aggarwal Manager of the respondent Company to the effect that there were complaints against the claimant due to which the Management had lost confidence in the claimant, has not been corroborated by any other witness. MW-2 Shri Mahavir Parsad and MW-3 Shri Om Parkash stated that the complaint was not made by them. No other person has been produced by the management to show that he had complained against the claimant. The claimant served the respondent from 1st May, 1981 to 8th May, 1983 and his services were terminated on 9th May, 1983 on the ground that the Management had lost confidence in him, which ground has not been proved as already mentioned above. The issue is decided accordingly against the Management.

ISSUE NO. 2 :

10. No notice or compensation was paid to the claimant even though he had served the respondent from 1st May, 1981 to 8th May, 1983 and as such the provisions of Section 25 of the Industrial Disputes Act, 1947, have not been complied with. Consequently the impugned order terminating the services of the claimant was neither justified nor proper and as such the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Dated 15th July, 1985.

Endorsement No. 550 dated 15th July, 1985.

Forwarded, (four copies), to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 29th July, 1985.

No. 9/5/84-6Lab./6147.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Bhartiya Electrical Steel Co. Ltd. E/4, Mathura Road, Faridabad.

IN THE COURT OF SHRI R. N. SINGAL,
PRESIDING OFFICER LABOUR COURT
FARIDABAD.

Reference No. 365 of 1984.

Between

SHRI HIRA NAND, WORKMAN AND THE
RESPONDENT MANAGEMENT OF M/S
BHARTIYA ELECTRICAL STEEL CO. LTD.,
13/4, MATHURA ROAD, FARIDABAD.

Present:

Shri Jawahar Lal for the workman.

Shri K. P. Aggarwal, for the respondent management.

AWARD

This industrial dispute between the workman Shri Hira Nand, and the respondent management of M/s. Bhartiya Electrical Steel Co., Ltd., 13/4, Mathura Road, Faridabad, has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/142-84/32821-26, dated 30th August, 1984 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Hira Nand, was justified and in order? If not to what relief is entitled?

According to the demand notice the workman was appointed on 5th May, 1983. He met with an accident on 25th January, 1984. He was declared fit on 7th May, 1984. He went to the respondent with the fitness certificate and he was taken on duty from 9th May, 1984. His services were terminated on 19th May, 1984. In the accident which the workman met in the factory of the respondent his first fingers of right hand has been choked off. The ESI card was also got prepared only when the accident took place. The workman has claimed reinstatement with continuity of service with full back wages.

This reference was contested by the management. Objection is taken that the reference does not fall within the purview of section 2-A of the Industrial Disputes Act. The averments of the demand notice are denied. It is alleged that the workman was fully covered under the ESI Act. He met with an accident on 25th January 1984. He was admitted in ESI Hospital. He received fitness certificate on 7th May, 1984 and joined duty on 8th May, 1984 and that he will get full compensation from the ESI. It is further alleged that he has worked only for 16 days from 20th January, 1984 to 9th May 1984. It is further alleged that the case does not attract the provisions of Section 2-A of the Industrial Disputes Act.

The reference was contested on the following issues:—

1. Whether the dispute does not fall under Section 2-A of the Industrial Dispute Act.
2. As per reference ?

I have heard the representatives of both the parties and gone the evidence on record. My findings on the issues are as under :—
ISSUE NO. 1:

The representative of the management has contended that in this case the workman has admitted that his case was being contested by the union from the beginning. This reference is not covered under Section 2-A as this reference has been sent to this Court on the demand notice of the workman. The representative of the management has relied upon the judgement of British India Corporation Ltd. F. S. Mohd Sadiq and others; 1973—FJR page 433. In this case it is held that when the dispute is sponsored by a union it becomes a collective dispute and could be referred for adjudication by the appropriate

Goverment under Section 10. In this case the union has issued the notice and thereafter all the correspondence were carried on by the union and at no stage the workman individually figures, and the dispute was referred by the appropriate Government for adjudication under section 2-A of the Industrial Dispute Act. Held that the order of reference was invalid and should be quashed."

In the present case demand notice was issued by the workman. There is no evidence that the union has been corresponding with the Labour Commissioner. Hence this is an individual dispute as mentioned under section 2-A of the Industrial Disputes Act and the reference is valid.

ISSUE NO. 2 :

The management had examined MW-1 Shri Ram Time Keeper and MW-2 Shri S. R. Maheshwari, Assistant Manager Production. He has stated that the claimant was appointed on 20th January, 1984. It is alleged that job of shell moulding on which the workman was working was of permanent nature. It is further admitted by them that the wage slips was not issued to the claimant and this only issued to the permanent workmen and there is separate register maintained for permanent and casual employee. No appointment letter was issued. Hence the management has not left with any proof with the workman that he was employed from 5th May, 1983. Under rule 7(1) and 7(2) and 7(3) identity card will be issued to the workman and he will produce the same at the factory gate, when demanded. It is also mandatory that the appointment letter be also issued. In the present case management did not comply with the provisions of Standing orders. It is unfair labour practice. There is no reason to disbelieve the statement of the workman that he was appointed on 5th May, 1983 and while doing the work of the respondent his one finger of right hand has been choked off. He was working on shell moulding and nature of work is permanent. In these circumstances, the order of termination is illegal and un-justified and is an act of unfair labour practice. The management have not paid any compensation as required under Section 25-F of the Industrial Dispute Act as he has completed 240 days of service at the time of termination of his service. The workman is therefore, entitled to reinstatement with continuity of service and with full back wages. The award

is given accordingly.

Dated 8th June, 1985.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 1959, dated 16th July, 1985.

Forwarded, (four copies), to the Commissioner and Secretary to Government Haryana Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Dispute Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

No. 9/5/84-6-Lab./6148.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Fritz and Singh (P) Ltd., Faridabad.

IN THE COURT OF SHRI R. N. SINGAI, PRESIDING OFFICER, LABOUR COURT, FARIDABAD.

Reference No. 164 of 1970.

(Ref. No. 243 of 1984) Fbd.

between

SHRI RADHA KISHAN, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S FRITZ AND SINGH (P) LTD., FARIDABAD.

Present :

None for the respondent management.
Shri Bhim Singh Yadav, for the workman.

AWARD

This industrial dispute between the workman Shri Radha Kishan, and the respondent management of M/s Fritz and Singh (P) Ltd., Faridabad, has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/432/A-70/29288-92, dated 18th September, 1970, under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Radha Kishan was justified and in order? If not to what relief is he entitled?

The writ petition of the management in Civil writ petition No. 827 of 1976 was accepted by the Hon'ble High Court,—vide judgment

dated 6th January, 1982 with the direction that the *ex parte* award and the subsequent order reviewing to set aside the same which was Ex. P-5 and P-8 were set aside with the direction to decide the dispute afresh in accordance with law and observations made.

Both the parties were given full opportunity to lead their evidence afresh. Shri Bhim Singh Yadav whose affidavit was accepted without opportunity to the management was also cross examined by the management and the management was also given opportunity to rebut his affidavit. The management did not appear in this court inspite of service through registered cover after receipt of this reference from Labour Court, Rohtak. Hence the management was proceeded *ex parte* on 11th March, 1985.

According to the claim statement, the workman was appointed in December, 1968. He was given chargesheet on 2nd March, 1970 which was duly replied. Another chargesheet was given to him which was also replied. The enquiry was conducted by Shri S. L. Gupta. The claimant objected the appointment of Shri S. K. Gupta as he was not a man of good reputation but the management did not entertain this objection. He was dismissed from service with effect from 15th May, 1970. No opportunity was given to him to defend himself. It is, therefore, prayed that the claimant be reinstated with full back wages and continuity of service.

The claim of the workman was contested by the management. It is denied that the workman has been victimised. It is further contended that the objections taken by the workman during the enquiry were properly attended by the enquiry officer and written reply given to the workman. Objection is taken that the workman is gainfully employed.

The parties contested the reference on the following issue:—

1. As per reference ?

I have heard the authorised representative of the workman and have minutely gone through the enquiry file and evidence produced by both the parties. My findings on the issues are as under:—

ISSUE NO. 1 :

The main attack of the claimant is that the enquiry was not fair and proper. The workman

was not allowed to be represented by his representative Shri Bhim Singh Yadav. No such plea has been taken in the claim statement that the workman was not allowed to be represented by Shri B. S. Yadav. Shri B. S. Yadav has filed his affidavit dated 20th December, 1972 that he was authorised by the workman to represent him in the enquiry, but the enquiry officer did not allow him to represent him. This affidavit is vague. Even in his cross examination Shri Bhim Singh Yadav has not been able to say the dates he had gone to represent the workman. He has not been able to produce the letter of authority of the workman, that he was authorised by the workman to represent him. The enquiry Officer Shri S. L. Gupta has denied as MW-1, that the workman was not allowed to be represented by Shri Bhim Singh Yadav. The workman was present before the enquiry officer on 20th March, 1970. He did not appear on the subsequent date, on 25th March, 1970 and 6th April, 1970 and a letter was also written to him, on 22nd April, 1970 that entire evidence already examined could be recalled to cross examine again if he desired, but there was no response from the workman. So was the case of the enquiry on 16th April, 1970 and 27th April, 1970. The workman inspite of appearing, has been writing un-necessary letters. He has written letter on 1st April, 1970 which was replied,—vide Ex. MW-3. He has not taken the plea that he was not allowed to be represented by Shri Bhim Singh Yadav. It also clearly shows that the plea of the workman that he was not allowed to be represented by Shri Bhim Singh Yadav is also only after thought. He was given full opportunity to defend himself. But the workman did not appear before the Enquiry Officer after 20th March, 1970. He should have appeared before the Enquiry Officer and he should have raised the objection if any. The workman has indulged in writing letters to the enquiry officer instead of appearing before him which is not a good practice. I, therefore find that both the enquiries conducted on 20th March, 1970, 25th March, 1970 and 6th April, 1970 and other enquiry on 16th April, 1970 and 27th April, 1970 were conducted fairly and properly.

The mis-conduct stated in the first chargesheet is that he misbehaved, threatened the supervisor and abused him that he will break his teeth. This chargesheet was denied by the workman in his reply dated 4th March, 1970. This is not gross misconduct that the workman

should be given capital punishment of dismissal. There is no evidence that previously also the workman behaved like this. Second chargesheet is that on 14th March, 1970 he stopped the car of the Managing Director on the gate and said that he would not allowed to go till his wages were paid. This also is not serious misconduct. It was the right of the workman to demand his wages. I am, therefore of the opinion that on the chargesheets the workman should not be punished with capital punishment of dismissal. This was his first fault, warning should have been given to the workman. The workman has suffered enough agony since 1970 when he was dismissed. He was out of employment since then. He is not gainfully employed anywhere. Therefore he has already suffered much more for his misconduct. I give benefit of Section 11-A to the workman and give the award that he is entitled to reinstatement with continuity of service and with fully back wages. The award is given accordingly.

Dated 6th June, 1985.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Forwarded, (four copies), to the Commissioner and Secretary to Government Haryana Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Dispute Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

No. 9/5/84-6Lab./6256.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of Faridabad Complex Administration, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 62/1982.

between

SHRI BHRIGU NATH PRASAD WORKMAN
AND THE MANAGEMENT OF M/S FARIDA-
BAD COMPLEX ADMINISTRATION,
FARIDABAD.

Present :

Shri K. L. Sharma, for the workman.
Shri Jagbir Singh Badhana for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Bhrigu Nath Prasad Workman and the Management dated 22nd June, 1982 pleaded that the Faridabad, to this Tribunal, for adjudication:—

Whether the termination of service of Shri Bhrigu Nath Prasad was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The claimant in his claim statement dated 30th March, 1982 alleged that he was appointed as an Octroi Moharrir on 19th November, 1966 at Rs. 271 per month. It was then alleged that the claimant was placed under suspension on 25th March, 1972 and was subsequently chargesheeted on 25th April, 1972 on fabricated allegations in retaliation against his active and legitimate participation in trade union activities. It was alleged that the claimant submitted his explanation on 5th May, 1972 to the Chief Administrator, Faridabad, when Shri P. K. Gaur, the then Administrator, Old Faridabad, was appointed as Enquiry Officer on 16th May, 1972. It was alleged that the Enquiry Officer never intimated any date of the enquiry to the claimant and that the findings of the enquiry officer were wrong and against the principles of natural justice because no opportunity was given to the claimant to appear before the Enquiry Officer. It was further alleged that the claimant filed a writ petition to the Hon'ble High Court and thereafter he filed appeal to the Government which took a lot of time and as such the delay was justified. It was then alleged that the punishment of dismissal was not commensurate with the offence.

3. The management in their written statement of M/s Faridabad Complex Administration, reference was belated and that the matter was barred by the readjudicata. It was also pleaded that the claimant committed a gross misconduct and was chargesheeted when Shri P. K. Gaur, Administrator, was appointed as Enquiry Officer who found the claimant guilty and thereafter the services of the claimant were terminated. It was also pleaded that the enquiry was valid.

4. The claimant in his rejoinder dated 6th July, 1982 reiterated the plea taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 6th July, 1982 —

- (1) Whether the reference is barred by the principles of res judicata ? OPM.
- (2) Whether the reference is bad on account of delay ? OPM.
- (3) Whether the enquiry was fair and proper ? OPM.
- (4) Whether the termination of service of Shri Bhrigu Nath was justified and in order ? If not, to what relief is he entitled ? OPM.

6. It may be mentioned that the Management has examined one witness and documents, Ex. M-1 to M-11, have been tendered into evidence. The claimant himself appeared in the witness box and also examined one witness and documents, Ex. W-1 to W-5, have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

ISSUE NO. 1:

7. It was argued on behalf of the management that since the claimant had availed of his remedy by filing the writ petition, therefore the present reference was barred by the principles of res judicata. Ex. W-5 dated 21st January, 1978 is the photo copy of the order delivered in writ petition in which the Hon'ble High Court held that alternate remedy by way of appeal was available to the claimant and he should seek that remedy and that period spent by the claimant in the Hon'ble High Court would be excluded by the appellate authority. This writ petition was decided on the technical ground and not on the merits and as such the present reference is not barred.

8. It may be mentioned that the representative of the management argued that the Industrial Tribunal had no jurisdiction to try the reference because the claimant was governed by the provisions of Punjab Civil Services Rules as mentioned in the appointment letter Ex. M-9. Firstly, no such plea was taken in the written statement. Secondly, the claimant was an employee of the Faridabad Complex Administration. Notwithstanding, the application of the provisions of the Punjab Civil Services Rules, he is governed by the provisions of the Industrial Disputes Act, 1947 because the provisions do not bar the jurisdiction of the Industrial Tribunal to try the present reference.

9. Consequently, it is held that the reference is not barred by the principles of res judicata. The issue is decided accordingly against the management.

ISSUE NO. 2:

10. It was argued on behalf of the Management that claimant was dismissed on 12th September, 1972, but the present reference was made in the year 1980 and was, thus had on account of delay. As already mentioned alone in the Judgment copy Ex. W-5, the appellate authority was, decided to exclude the period spent by the claimant in writ petition when the appeal was decided on 13th March, 1981. The representation dated 23rd March, 1981 was made by the claimant as per annexures E and F, filed by the claimant alongwith claim statement. Since the appeal was rejected the demand notice dated 1st September, 1981 was filed by the claimant and the present reference was made by the Government on 26th February, 1982. Consequently, the reference is not bad on account of delay. The issue is decided accordingly against the management.

ISSUE NO. 3 :

11. The Management has examined Shri P. K. Gaur who stated that he was as Administrator, Old Faridabad Zone, from August, 1970 to August, 1972. He further stated that the claimant was as employed as Octroi Moharrir and was chargesheeted vide chargesheet Ex. M-1 on 25th April, 1972 by Shri M. Shanker, then then Chief Administrator Faridabad Complex Administration. He further stated that Ex. M-2 was the copy of the reply given by the claimant on 4th May, 1972 and that he (MW-1) was appointed as Enquiry Officer by the Chief Administrator vide letter Ex. M-3. He then stated that notices Ex. M-4 were issued by him to both the parties and that Shri Satish Kumar Peon had left the services, while the claimant did not appear in the enquiry proceedings. Ex. M-11 is the copy of the report of the Octroi Peon to the effect that the claimant had left the service and had gone to Gorakhpur. MW-1 Shri P. K. Gaur further stated that Ex. M-5 and M-6 were the statements of Shri Sher Singh Importer and Shri K. P. Singh Octroi Superintendent respectively and that Ex. M-7 and M-8 were the copies of his findings regarding the claimant as well as Shri Satish Kumar Octroi Peon. He also stated that Ex. M-9 was the copy of the appointment letter of the claimant and that Ex. M-10 was the copy of the suspension order. He further stated that

the enquiry was held by him in accordance with the principles of natural justice and that he gave his findings on the basis of evidence produced before him.

12. WW-1 Shri Bhirgu Nath claimant stated that he was suspended on 25th March, 1972 vide letter Ex. W-1 and received the chargesheet Ex. W-2 on 25th July, 1972. He further stated that Ex. W-3 was the copy of the explanation given by him and thereafter the Enquiry Officer was appointed vide letter Ex. W-4. He then stated that he did not receive any notice regarding the holding of any domestic enquiry and that register of suspended workers was maintained by the Faridabad Complex Administration for marking attendance and further that suspension allowance was given on the basis of the entries made in that register. He further stated that he received full suspension allowance according to the rules and that he never remained out of station during the suspension period and that one could leave station with the prior permission during the suspension period. He then stated that he received the copy of the report in Hindi of the Enquiry Officer but he did not receive the copy of day to day proceedings and that he was not given any opportunity to produce his defence witnesses. He further stated that he filed writ petition and that Ex. W-5 was the copy of the order passed in those proceedings and that thereafter he filed an appeal to the Secretary, Local Self Government and then he served demand notice. WW-2 Shri Jagdish Chand stated that previously he was employed as Octroi Moharrir, but at present he was working as Water Rate Clerk. He further stated that he knew the claimant and that a register was being maintained regarding the officials, who were under suspension and that suspended officials could proceed out of station with the prior permission. He then stated that according to his knowledge, the claimant never remained out of station during the suspension period because we used to meet him and that he did not know if he received any notice from the Enquiry Officer. He further stated that claimant used to get the suspension allowance.

13. A perusal of the above evidence would show that the claimant was chargesheeted on 25th April, 1972, vide chargesheet copy Ex. W-2, in which it was mentioned that the claimant was on duty on 25th March, 1972 from 8.00 a.m. to 4.00 p.m. on Octroi Post No. 1 when Shri Sher Singh came to that Octroi Post No. 1 for making payment of Octroi Tax for importing Electric Motor

within the limits of N.I.T. Faridabad Zone, but instead of receiving payment, the claimant allowed him to import the Electric Motor through back side way of the Octroi Post without making Octroi Tax and provided him the cycle of Shri Satish Kumar, Octroi Peon, who was on duty with him. It was further alleged that Shri Sher Singh Importer has caught red-handed by Shri Kanwarpal Singh, Octroi Superintendent of Old Faridabad Zone and after getting some information the claimant had got issued receipt No. 80/29 for having received the payment of Octroi Tax for this Electric Motor through Shri Satish Kumar, Octroi Peon, whereas it was the duty of the claimant to issue such receipt. It was alleged that by these acts, the claimant had tried to cause financial loss to the administration and his acts amounted to willful neglect of his duty and cheating the Administration. MW-1 Shri P. K. Gaur was appointed as Enquiry Officer and his findings, copy Ex. M-8, show that Shri Satish Kumar did not attend the enquiry inspite of the notice while the report regarding the claimant was that he had left Faridabad and had gone to Gorakhpur. This finding was based by the Enquiry Officer on the report of Shri Manohar Lal Octroi Peon Ex. M-11 in which it was mentioned that the claimant had left the place and had gone to Gorakhpur when the ex parte enquiry was held by the Enquiry Officer. Shri Kanwar Pal Singh, Octroi Superintendent, appeared before the Enquiry Officer who recorded his statement Ex. M-6, in which it was stated that Shri Satish Kumar Octroi Peon had asked Shri Sher Singh Importer to go from the back side of the Octroi post alongwith Electric Motor which was kept on a cycle and that Shri Sher Singh was caught red handed by him alongwith Electric Motor in front of M/s Singla Hardware Store. Shri Sher Singh Imported in his statement copy Ex. M-5 stated that when he came to the Octroi Post, Octroi peon was present, but the Octroi Moharrir (Claimant) was not there and that Octroi Peon gave him a cycle and asked him to take electric machine from back side of the Octroi Post. He further stated that before leaving Octroi post, Octroi Moharrir came there but he did not ask him to get the Octroi receipt issued. He further stated that he was caught by the Octroi Superintendent in front of his shop and Octroi receipt No. 29/80, which was shown to him had not been got turned by him. On the basis of the statements, Ex. M-5 and M-6, the Enquiry Officer gave his findings Ex. M-7 and M-8 regarding the claimant and Shri Satish Kumar Octroi Peon to the effect that the charges against them were proved. The statements Ex. M-5 and M-6

go to show that Shri Kanwarpal Singh Octroi Superintendent, did not mention any thing against the claimant in his statement Ex. M-6 but involved Shri Satish Kumar Octroi Peon in the incident. The testimony of Shri Sher Singh Importer, copy Ex. M-5, however, shows that Shri Satish Kumhar Octroi Peon was the main offender because in the absence of the Octroi Moherrir, he asked Shri Sher Singh to take Electric Motor on his cycle from the back side of the Octroi Post without payment of Octroi tax. The claimant according to the statement of Shri Sher Singh importer came to the Octroi Post before Shri Sher Singh left the Octroi Post and did not ask him to get Octroi receipt issued. The claimant abetted the offence committed by Shri Satish Kumar Octroi Peon because he could ask Shri Sher Singh to get Octroi receipt issued when he came to the Octroi post and Shri Sher Singh was going to leave that place. The testimony of Shri Sher Singh also shows that Octroi receipt No. 29/80 was not got issued by him. This receipt was issued by Shri Satish Kumar Octroi Peon without mentioning the name of the Importer therein and the Enquiry Officer has given the finding that this Octroi receipt was issued later on when Shri Sher Singh was caught red handed by the Octroi Peon, whereas it was the duty of the claimant to issue such a receipt and mention the name of the importer therein. The evidence produced in the enquiry shows that the main offender was Shri Satish Kumar Peon and that the claimant abetted commission of the offence as mentioned above.

12. It was argued that the ex parte proceedings against the claimant have been wrongly ordered because the claimant was under suspension and was getting suspension allowance and marking his presence in the register. The report of Shri Manohar Lal Octroi Peon copy Ex. M-11, shows that the claimant had left Faridabad and had gone to Gorakhpur without mentioning his address. Moreover MW-1 Shri P. K. Gaur Enquiry Officer, who was also the Administrator Faridabad Complex Administration, stated in cross examination that the suspension allowance was given to the suspended employee whether he was present or not and that same time, suspended employ left the station without giving any application. The Testimony of WW-1 Shri Bhrigu Nath Parshad that he never left Faridabad cannot be accepted because in the report Ex. M-11, it was clearly mentioned that he had left Faridabad and had gone to Gorakhpur. The report of the official carries a presumption

of truth, unless that presumption is rebutted. The testimony of WW-2 Shri Jagdish Chand does not help the claimant because this witness stated in cross examination that the claimant never marked his attendance in his presence. The attendance register has not been got produced in evidence by the claimant to rebut the report, Ex. M-11. Consequently, the Enquiry Officer rightly proceed ex parte against the claimant.

13. It was then argued that second show cause notice was not given to the claimant nor the copy of the findings of the Enquiry Officer was given to him. The argument is without any force because the file shows that second show cause notice was given to the claimant on 7th September, 1972 and he gave his reply to the same on 8th September, 1972. In this reply, the report of the Enquiry Officer has been referred to and it was mentioned that the Enquiry Officer had incorporated in the enquiry report his personnel opinion. This circumstance shows that when the claimant gave the reply to the second show cause notice, the report of the enquiry was before the claimant and he then gave his reply.

9. It was then argued that the Enquiry was completed in one day and as such it cannot be termed as proper enquiry. The argument does not carry any weight because the ex parte enquiry was held and the Enquiry Officer was able to complete the same in one day.

20. It was argued that the enquiry proceedings had not been placed on the file. The material documents have been placed by the management on the file and as such this circumstance does not affect the management's case.

17. It was also argued that before giving the chargesheet, the preliminary enquiry should have been held. Since Shri Sher Singh importer was caught red handed and his statement was recorded, the Management did not deem it necessary to hold the preliminary enquiry before giving the chargesheet. The argument, therefore, does not carry any weight.

18. In view of the above discussion it is held that the enquiry was fair and proper. The issue is decided accordingly in favour of the Management.

ISSUE NO. 4 :

19. It was argued by the representative of the claimant that the punishment awarded to the claimant was disproportionate to the offence committed by him, while the contention of the representative of the Management was that the punishment was proportionate to the offence committed by the claimant. The order of dismissal dated 18th September, 1972 as well as

second show cause notice dated 7th September 1972 do not mention that the past record of the claimant was not clean and the presumption, therefore, is that his past record was clean. It has also been found that the main offender was Shri Satish Kumar Octroi Peon, who had left the services and that the claimant abetted the offence. Moreover, the claimant has been fighting litigation since 1972 by finding writ petition and went in appeal as per judgment of the Hon'ble High Court Ex. W-5. Under all these circumstances, the punishment of dismissal is inappropriate to the offence committed by him. The ends of justice would be met if the claimant is reinstated, but he should be deprived of his full back wages for his misconduct alongwith

stoppage of two annual increments with cumulative effect. The awad is passed accordingly.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 559, dated 20th July, 1985.

Forwarded, (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 5th August, 1985

No. 9/5/84-6Lab./16455.—In pursuance of the provisions of Section 17 the Industrial Dispute Act, 1947 (Central Act No. XIV of 1947) The Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s. Lakshmi Precision Screws Limited, Hissar Road, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 30 of 1979

between

SHRI RAM MEHAR SHARMA, WORKMAN AND THE MANAGEMENT OF M/S. LAKSHMI PRECISION SCREWS LTD., HISSAR ROAD ROHTAK

Present.—

Shri S. S. Gupta, A.R. for the workman.

Shri M. M. Kaushal, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following disputes, between the workman Shri Ram Mehar Sharma and the management of M/s. Lakshmi Precision Screws Ltd., Hissar Road, Rohtak, to this Court, for adjudication.—*vide* Labour Department Gazette Notification No. RTK/4.79/3957, dated 25th January, 1979 :—

Whether the termination of service of Shri Ram Mehar Sharma was justified and in order ?
If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the workman is that he was employed with the respondent in a permanent capacity and that the respondent declared an illegal lock out on 14th October, 1978, which was lifted on the intervention of the Labour Minister on 22nd May, 1978 and that in the settlement talks which took place in the presence of the Labour Minister, Government of Haryana on 20th July, 1978, it was agreed that all the workers shall be taken back in employment within a week and so, the applicant approached the management to allow him to resume his dues but he was made to shuttle from pillar to post and ultimately on 27th August, 1978 the management refused to allow him to resume his duties and that the reasons for his ouster from the factory premises was that he was active worker of Engineering Workers Union, which was affiliated to the Central Trade Union of India working under the aegis of the Communist Party of India. So, the crux of the allegations are that he was victimised by the respondent because of his union activities.

3. In the reply filed by the respondent, the claim of the workman has been converted. The preliminary objection taken is that this Court has no jurisdiction to try this reference. It was alleged that a lock out was declared on 10th April, 1978, which was legal and justified and the same was lifted on 22nd May, 1978 on the intervention of the Hon'ble Labour Minister, Government of Haryana and all the demands of the workers were referred to a Board of Arbitrators. It is also alleged that the workman for the first time approached the management to allow him to resume his duties on 27th July, 1978 in the Court of Deputy Commissioner, Rohtak at the time when a mutually agreed settlement between the workman and the management was being filed before the Board of Arbitrators and that the workman was told at that time since he has remained absent from duty from 22nd May, 1978 to 27th August, 1978, he himself lost lien to his employment by long absence.

4. On the pleadings of the parties, the following issues were settled for decision on 5th July, 1979 :—

1. Whether this Court has no jurisdiction to entertain this reference?
2. Whether the workman did not report for duty within a week from the date of lifting of lock out on 22nd May, 1979 and absented himself upto 27th July, 1978 and thereby lost his lien on his post as per standing order?
3. Whether the termination of service of Shri Ram Mehar Sharma was justified and in order? If not, to what relief is he entitled?

5. The parties were allowed to produce their evidence. The management examined MW-1 Shri K.C. Nagpal, Personnel Officer and the workman examined MW-1 Shri Raj Kumar and Shri S.N. Vats as WW-3, himself appeared as WW-2.

6. Authorised Representatives of the parties heard. My findings on the issues framed are as below :—

ISSUE NO. 1.

7. No arguments were addressed on this issue. So, the same goes against the respondent.

ISSUE NO. 2

8. The Learned Authorised Representative of the respondent Shri Kaushal contended that since this issue is beyond the terms of reference, so this Court cannot decide this issue as the same is not incidental or ancillary to the main controversy between the parties. The terms of reference fall in a very narrow compass. The same are confined to the justifiability or otherwise of the termination of services of the workman and if not to what relief the workman is entitled. So this issue is absolutely alien to the terms of reference. The case of the respondent through out has been that the workman abandoned his employment as he remained absent from duty without leave from 25th May, 1978 to 27th August, 1978 and that under the provisions of the Certified Standing Orders of the company, he has lost lien to his employment. Shri Kaushal contended that in view of the law laid down in *Bombay High Court 1984(I) LLN 297 between Sita Ram Vishnu Shirodkar and Administrator Govt. of Goa and others*, this Court is not competent to travel beyond the terms of reference and decide the question as to whether the workman has abandoned his employment. In this authority their Lordships copiously extracted paragraphs from the Full Bench authority of the Hon'ble High Court of Delhi reported in *Indian Tourism Development Corporation New Delhi Vs. Delhi Administration Delhi and others (1982-II LLN 762)*. There is gain saying the fact that the terms of reference cannot be enlarged by this Court to bring within its parameters the question as to whether the workman abandoned his employment voluntarily by remaining absent from duty from 22nd May, 1978 to 27th August, 1978, on which date, he is alleged to have approached the management to allow him to resume his duties.

9. The latest authority on this point *1985 Lab. I.C. 480 between Rajasthan State Road Transport Corporation and others, and the Judge Industrial Tribunal, Rajasthan, Jaipur and others*. In this authority also Lordships of the Hon'ble High Court of Rajasthan observed as under :—

The Tribunal gets its jurisdiction to adjudicate upon the point or points of disputes referred to it, and in that sense, the parameters of its jurisdiction are defined in the order of reference and it must confine itself within those parameters. The Tribunal is not free to enlarge the scope of the reference by reading into it matters which are not incidental to the point or points referred.

10. So, viewed from any angle, there is no difficulty in holding that the controversy in hand substantially spills beyond the terms of reference and as such, this Court cannot adjudicate upon points absolutely alien to the same and so, this reference is bad in law and answered accordingly and there is no order as to cost.

Dated the 15th June, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 30-79/1117, dated 27th July, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

The 20th August, 1985

No. 9/5/84-6Lab./6617.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Ess Kay Textile 22-A, N.I.T., Faridabad.—

* BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA FARIDABAD

Reference Nos. 159/82, 174/82, 175/82
and 161/1982

between

SARVSHRI RAM DULAR, NANDU, LALLAN SINGH AND SHRI DAROGA PARSHAD,
WORKMEN AND THE MANAGEMENT OF M/S ESS KAY TEXTILE, 22-A,
N. I. T., FARIDABAD

Present :

Shri Manohar Lal, for the workman.

None for the management.

AWARD

This award would dispose of four consolidated references bearing Nos. 159/82 Shri Ram Dular (2) 174/82 Shri Nandu, (3) Shri Lallan Singh and (4) Shri Daroga Parshad workmen *versus* M/s Ess Kay Textile, 22-A, N. I. T., Faridabad and the main proceeding have been held in reference No. 159/1982.

2. In exercise of the powers conferred by clause (d) of sub-section (c) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following disputes between Sarvshri Ram Dular, Nandu, Lallan Singh and Daroga Parshad workman and the management of M/s Ess Kay Textile, 22-A, N.I.T., Faridabad, to this Tribunal, for adjudication :—

Whether the termination of service of Sarvshri Ram Dular, Nandu, Lallan Singh and Daroga Parshad was justified and in order ? If not, what relief are they entitled ?

3. Notices were issued to both the parties. It may be mentioned that on the last date of hearing, none appeared on behalf of the management, even though they were represented previously and as such *ex parte* proceedings were ordered against them. The workmen have examined Shri Ram Dular who stated that he was appointed in the respondent factory on 1st January, 1981 as weaver, but was turned out on 22nd January, 1982 and was receiving Rs 300 per month as wages. He further stated that the workmen demanded wages on the seventh day of the month, but the management told them that they were not in a position to pay the amount. He further stated that the wages were again demanded on 20th day of the month when the management asked the Chowkidar to close the gate

of the factory. He further stated that no compensation was paid to them and that the factory was closed after two months of the termination of their services and was lying closed even now. He further stated that the date of appointment of Shri Daroga Parshad was 1st June, 1981 while the date of appointment of remaining three workmen was 1st January, 1981.

4. A perusal of the above evidence would show that Shri Ram Dular, Shri Nandu and Shri Lallan Singh claimants were appointed on 1st January, 1981 and were turned out on 21st January, 1982, when they had already completed the period of one year and had rendered more than 240 days service. Shri Daroga Parshad had served the respondent from 1st June, 1981 to 21st January, 1982, i.e. for 235 days, and was going to complete 240 days when his services were terminated without any cogent ground. In the ruling reported as *Kapurthala Central Co-operative Land Ltd. versus Presiding Officer, Labour Court, Jullundur and others*, 1984-Lab. I. C. 974, the provisions of section 25-F of the Industrial Disputes Act, 1947 were made applicable, even though the employee in that case had rendered 230 days service and termination of the services of the employees on the verge of their completing 240 days service was held to be unfair labour practice. Consequently, the provisions of section 25-F of the Industrial Disputes Act, 1947 are also applicable to the case of Shri Daroga Parshad as well because his service were terminated on the verge of his completing 240 days Service. Since no notice pay or compensation was paid to the claimants, therefore, the provisions of section 25-F of the Industrial Disputes Act, 1947 have not been complied with by the management. The claimants services were terminated on 21st January, 1982. It has come into evidence of Shri Ram Dular workman that the factory was closed after two months of termination of their services which means that the factory was closed with effect from 22nd March, 1982. Since the termination of services of the claimants was neither justified nor proper being in violation of the provisions of section 25-F of Industrial Disputes Act, 1947, the claimants are entitled to notice pay and compensation under provisions of section 25-F of the Industrial Disputes Act, 1947 and also full wages for the period 22nd January, 1982 to 21st March, 1982 and as such the question of reinstatement of the claimants does not arise. The award is passed accordingly.

Dated 1st August, 1985.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 607, dated 1st August, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 23rd August, 1985

No. 9/5/84-6Lab./6900.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s Mechanical Movements (P) Ltd., Industrial Area, Bahadurgarh, district Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK
Reference No. of 11 of 1981

between

SHRI MOJI RAM, WORKMAN AND THE MANAGEMENT OF M/S MECHANICAL MOVEMENTS (P) LTD., INDUSTRIAL AREA, BAHADURGARH, DISTRICT ROHTAK.

Present:—

Shri Harish Aggarwal, A. R. for the workman.

Shri M. M. Kaushal, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Moji Ram and the management of M/s. Mechanical Movements (P) Ltd., Industrial Area, Bahadurgarh, district Rohtak, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/SPT/161—80/60546, dated 17th December, 1980 :—

Whether the termination of services of Shri Moji Ram, was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent as a Fitterman since the year 1975 on monthly wages of Rs. 265 and that the respondent choose to terminate his services on 14th July, 1980 without any prior notice or payment of any retrenchment compensation in flagrant disregard of the provisions of the Industrial Disputes Act, 1947 and hence there is a prayer for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, the claim of the workman has been controverted. Preliminary objections taken are that the workman of his own submitted his resignation on 11th July, 1980, which was accepted by the respondent on the said date and so, there is no question of terminating the services of the workman and as such, the present dispute cannot come into the purview of section 2-A of the Industrial Disputes Act, 1947, and more so, on this ground also, the reference is bad in law. On merit, it is admitted that the petitioner was employed as alleged, though he joined the respondent on 10th July, 1975. It is also denied that the petitioner was employed as a Fitter. It is alleged that he was employed as a Helper. Additional pleas projected are that the workman remained gainfully employed after leaving the service of the respondent.

4. On the pleadings of the parties, the following issues were settled for decision on 9th July, 1981 :—

1. Whether the workman resigned on 11th July, 1980 and the resignation was accepted on the same date ? If so, to what effect ?
2. If issue No. 1 is not proved, whether the termination of services of Shri Moji Ram was justified and in order ? If not, to what relief is he entitled ?

5. Both the parties were allowed to lead their evidence. The management examined Shri S. P. Chanda MW-1, Shri Shri Dhar, Time Keeper MW-2, Shri Jaspal Chand Jain MW-3. On the other hand, the workman examined Shri Bharat Bhushan WW-1 and himself appeared as WW-2.

6. Learned Authorised Representatives of the parties heard.

7. Learned Authorised Representatives of parties agreed that the terms of reference in the present case are absolutely alien to the controversy in hand. Clear cut stand of the respondent is that that workman resigned of his own on 11th July, 1980, whereas the case of the workman is that his services were terminated by the management unlawfully on 14th July, 1980. Now the question would be as to whether this Court can travel beyond the terms of reference or not. On this point the learned Authorised Representative of the respondent Shri Kaushal has drawn my attention to 1984 II LLN 297 *Sita Ram Vishnu Shirodkar and Administrat or Government of Goa and others*. In the authority under reference a plea of abandonment taken by the management and in that situation, their Lordships held that since the plea of abandonment was not referred to the Tribunal by the Government, the same cannot be gone into by the Tribunal, which cannot travel beyond the terms of reference. In the present case also, plea of the management is that the workman voluntarily resigned on 11th July, 1980 and as such this controversy too substantially spills beyond the terms of reference. In the authority under reference their Lordships also referred to a Full Bench authority of the Hon'ble/Delhi High Court reported in 1982 (II) LLN 762 *India Tourism Development Corporation, New Delhi and Delhi Administration, Delhi*. Relevant portion from the observations made in the said authority can be quoted here advantage :

“It is settled law that the jurisdiction of the Labour Court/Industrial Tribunal in industrial dispute is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not permissible to beyond the terms of the reference. It exercises such jurisdiction and power only upon and under order of reference limited to its terms. It cannot travel beyond the terms of reference except for ancillary matters. Making of an order of reference is undoubtedly an administrative function, but even that is amenable to judicial review in the proceedings under Art. 226 under certain facts and circumstances.

8. The latest authority on the point has been reported in **1985 Lab. I. C. 480** Rajasthan State Road Transport Corporation and others V/s. The Judge, Industrial Tribunal, Jaipur and others. In this authority also his Lordship observed and I quote :—

“The Tribunal gets its jurisdiction to adjudicate upon the points of dispute referred to it; and in that sense, the parameters of its jurisdiction are defined in the order of reference and it must confine itself within those parameters. The Tribunal is not free to enlarge the scope of the reference by reading into it matters which are not incidental to the point or points referred.”

9. So, without going into the merits of the controversy as to whether the resignation submitted by the workman was voluntarily or the same is forged one, there is no difficulty in holding that since the controversy in hand is not covered in the terms of reference and the issue involved is not incidental or ancillary to the same, this Court cannot adjudicate upon the same and as such, this reference is held to be bad in law and answered accordingly. There is no order as to cost.

B. P. JINDAL,

Dated the 27th July, 1985.

Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 11-81/1180, dated the 7th August, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

The 2nd September, 1985

No. 9/5/84-6Lab./7241.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Special Machines, Bye-Pass Kunjpura Crossing, Karnal:—

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 212/1983

between

SHRI HAWA SINGH, WORKMAN AND THE MANAGEMENT OF M/S SPECIAL MACHINES
BYE-PASS KUNJPURA CROSSING, KARNAL

Present:-

Shri M. L. Channa, for the workman.

Shri J. P. Singh, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Hawa Singh, workman and the management of M/s Special Machines Bye-Pass Kunjpura Crossing, Karnal, to this tribunal for adjudication:—

Whether the termination of services of Shri Hawa Singh was justified and in order? If not, to what relief is he entitled?

2. Notices of the reference were issued to both the parties. On the last date of hearing, Shri Jai Pal Singh, representative of the management, stated that the dispute between the workman and the management had already been settled and that the workman had received his dues in full and final settlement of his claim,—*vide* letter Ex. M-1 and registered A. D. receipt Ex. M-2 and that no dispute was now left between the parties. Shri Mukand Lal Channa, representative of the workman stated

that he had heard the above statement made by the representative of the management, which was correct, and that the dispute had already been settled, as mentioned above. In view of the testimony of Shri Jai Pal Singh, representative of the Management and Shri Mukand Lal Channa, representative of the workman and recitals made in the documents Ex. M-1, and M-2 the dispute between the parties stands settled as above mentioned. The award is passed accordingly.

Dated the 22nd August, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 664, dated the 22nd August, 1985

Forwarded (four copies) to the Commissioner and Secretary to Govt. Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab./7242.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Panipat Cooperative Sugar Mills Ltd., Panipat.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,

FARIDABAD

Complaint No. 10/1982

between

SHRI RAM DASS, COMPLAINANT AND THE MANAGEMENT OF M/S PANIPAT
COOPERATIVE SUGAR MILLS LTD., PANIPAT

Present:

Shri Gian Chand, authorised representative for the complainant.

Shri R. S. Malik, authorised representative of the management.

AWARD

This complaint has been filed by Shri Ram Dass, complainant against the management of M/s Panipat Cooperative Sugar Mills Ltd., Panipat, under Section 33-A of the Industrial Disputes Act, 1947 regarding termination of his services.

Notices of the complaint were issued to both the parties. On the last date of hearing, Shri Gian Chand, representative of the complainant stated that he was not interested to pursue the complaint because the complainant had already joined service and that no dispute was left between the parties. In view of the testimony of Shri Gian Chand, representative of the complainant, the dispute between the parties stands settled. The award is passed accordingly.

Dated the 22nd August, 1985.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 665, dated the 22nd August, 1985.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.